IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

OP.No. 13980 of 2003(L)

PETITIONER:

P.S. NAZIR,
S/O.P.M.SAIDALI, AGED 30 YEARS, P.M.S.RICE MILL,
TENEER POST, PALAKKAD.

BY ADV. SRI.K.ANAND

RESPONDENTS:
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1. **THE LABOUR COURT, KOZHIKODE,**
   PALAKKAD CAMP, REP. BY ITS PRESIDING OFFICER.

2. **K.SUDHAKARAN, S/O.CHATHU,**
   KARAKKATTUKUNDEL HOUSE,
   P.O. MULANJOOR,
   CHUNGANAGAD, OTTAPALAM.

BY ADV. SRI.LAL GEORGE
SRI.SEBASTIAN VARGHESE

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.23588/2003 IN OP. NO.13980/2003

DISMISSED

22/06/2007 **SD/- T.R.RAMACHANDRAN NAIR, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE AWARD DT. 14.8.01 IN I.D. NO.63/93 OF THE LABOUR COURT, KOZHIKKODE (1ST RESPONDENT).

/TRUE COPY/

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T.R. Ramachandran Nair, J.

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O.P.NO.13980 of 2003-L

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Dated this the 22nd day of June, 2007

JUDGMENT

The petitioner is one of the co-owners of P.M.S. Rice Mill, Palakkad. According to the petitioner, it was purchased by his father from one T.S. Ranganathan on 7.12.1995 and after his death, the rice mill is in the joint ownership of the petitioner and his brothers and sisters. The main prayer in the original petition is to issue a writ of mandamus commanding the first respondent not to proceed with further in C.P. No.62/2002 in I.D. No.63/1993 as against the petitioner. Ext.P1 is the award passed by the Labour Court in I.D. No.63/1993. The issue referred in the said industrial dispute was regarding the denial of employment of the respondent herein. The previous owner Shri T.S. Ranganathan and one Andavan, licensee were arrayed as parties before the Labour Court at the relevant time. The petitioner submits that he was not a party to the above dispute and therefore the award is not binding on him. According to him, he came to know of the award when notice in C.P.No.62/2002 was received by him. The contention is that the petitioner who is one of the co-owners, had nothing to do with the award and therefore the claim petition cannot be enforced under Section 33

(c)(2) of the Industrial Disputes Act.

2. I heard learned counsel for the petitioner and learned counsel for the respondents. It was argued by learned counsel appearing for the second respondent that in view of Section 18(3)(c) of the I.D. Act, the award is binding on the petitioner also. Section 18(3)(c) of the Act reads as follows:

> "(c) Where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates."

Apart from that, learned counsel relied upon the principles stated by the Apex Court in **Anakapally Co-operative Agricultural and Industrial Society v. Its workers** (1962 (II) LLJ 621) and the Division Bench decisions of this court in **Musaliar Industries (Private) Ltd. v. State of Kerala and others** (1960 (II) LLJ 341) and **Sainalabdeen Musliar v. District Collector (1993 (2) KLT 451),** to contend for the position that being the transferee of the unit in question, the award is binding on him.

3. The counsel for the petitioner relied upon the decision of a learned single judge of this court in **Binny Ltd., Cochin v. Thomas Paul & others** (1977 KLT 96) to contend for the position that he being a transferee, cannot be compelled to re-employ a person.

4. The question came up before the Division Bench in 1960(II) LLJ 341 was whether the successor company could be impleaded in the dispute.

After considering the issue in the light of the various provisions of the Industrial Disputes Act, it was held as follows:

> " Gaps in carrying on a business by different persons should not be destructive of what the employees have acquired; for once gaps in working a business by the same management be held not to constitute a break in employment, the rule should not be different with change of management in similar condition. The conclusion therefore, is justified that where the identity of business be not destroyed by the interruption the outgoing and incoming management would be doing the same business."

A Constitution Bench of the Supreme Court in 1962 (II) LLJ 621, after analysing Sections 2(oo), 25F, 25FF and 25H of the Industrial Disputes Act, examined the question as to whether a purchaser of an industrial concern can be held to be successor in interest of the vendor and if so, what will be the liability of such a person. It was held that the purchaser will be a successor in interest. A Division Bench of this court following the above decision of the Apex Court, in 1993 (2) KLT 451, held that a successor-in-interest will be bound by the terms of the award.

5. It is therefore clear that the contention of the petitioner that without impleading him before the Labour Court, the award cannot be enforced against him, is not correct.

6. The further question is whether the petitioner is liable to re-employ the workman concerned with backwages and other benefits. The said question depends upon the terms of the purchase as well as other

relevant circumstances. Those details are not covered by the pleadings in this Original Petition. The previous owner is not in the party array here. Apart from that, the award itself has not been challenged by the previous owner and by the petitioner. Therefore, it is not possible for this court to finally pronounce upon the matter. Admittedly there are other co-owners of the concern, who are also not parties here. Since the entire matter is pending before the Labour Court in C.P.No.62/2002, the petitioner can agitate the said issue before the Labour Court itself. Merely because petitioner had no notice before the award is passed, he cannot claim the reliefs now sought.

Without prejudice to the above right of the petitioner, the original petition is closed. Since the award is of the year 2001 and the Claim Petition is of the year 2002, the Labour Court will expedite the hearing of the matter and at any rate, finally pronounce upon all issues within a period of six months from the date of receipt of a copy of this judgment.

(T.R. Ramachandran Nair, Judge.)

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T.R. Ramachandran Nair, J.

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O.P.NO.13980 of 2003-L

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JUDGMENT

22nd day of June, 2007